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10/014,106

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Kyle G. Brown

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01/15/2009

(SAUL-RSW) PATENT DOCKETING CLERK  
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Penn National Insurance Tower  
2 North Second Street, 7th Floor  
Harrisburg, PA 17101

EXAMINER

SWEARINGEN, JEFFREY R

ART UNIT

PAPER NUMBER

2445

MAIL DATE

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01/15/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* KYLE BROWN, STEPHEN GRAHAM,  
STEVEN MILLER AND MARK WEITZEL

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Application No. 10/014,106  
Technology Center 2100

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Mailed: January 15, 2009

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Before TOI JOHNSON *Review Paralegal*  
JOHNSON, *Review Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 8, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the

Application No. 10/014,106

application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

INCONSISTENCIES WITH THE FINAL  
REJECTION, APPEAL BRIEF AND EXAMINER'S ANSWER

A review of the file finds inconsistencies between the last rejection of record, corresponding sections in the Appeal Brief and the Examiner's Answer as set forth below.

Final Rejection

A review of the Final Rejection mailed on July 24, 2007, finds the following status of the claims: claims cancelled: NONE, claims allowed: NONE, claims rejected: 1-48 and claims withdrawn: NONE.

A further review of the file finds that claim 49 was added in an amendment filed on May 16, 2007 however, the Final Rejection did not discuss the status of claim 49.

Appeal Brief

A review of the Appeal Brief filed on February 5, 2008, finds that the status of claim 49 is unclear as compared to the amendment filed on May 16, 2007 and other sections of the Appeal Brief. Specifically, Appellants have not indicated that claim 49 is being appealed however; claim 49 has been

discussed in the Summary of Claimed Subject Matter section and included in the Claims Appendix.

Examiner's Answer

A review of the Examiner's Answer mailed on April 11, 2008, finds that the status of claim 49 is unclear as compared to the amendment filed on May 16, 2007 and the Appeal Brief's Summary of Claimed Subject Matter and Claims Appendix sections.

Specifically, claim 49 is not included in any statement of rejection for review by the Board of Patent Appeals and Interferences.

Correction is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) vacate the Examiner's Answer mailed on April 11, 2008,
- 2) issue a Supplemental Examiner's Answer that address claim 49 and to correct other sections of the Answer as may be required;
- 3) include the necessary approval from the TC Director or designee in accordance with MPEP 1207.05, part (B) as may be required for any new grounds of rejection;

4) hold the Appeal Brief filed February 5, 2008 defective, as required by 37 CFR § 41.37(d);

5) notify the Appellant to submit a Supplemental Appeal Brief which corrects the Appeal Brief's Status of Claims under 37 CFR §41.37(c)(1)(iii) and to correct other sections of the Brief as may be required;

6) acknowledge and consider the Supplemental Appeal Brief submitted by Appellant to correct the Appeal Brief; and

7) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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